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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari from
Beaufort County
Honorable Roger M. Young, Circuit Court Judge

Appellate Case No. 2024-000667

DONTARIOUS JARON WRIGHT,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner's Question

Did the PCR judge err in refusing to grant relief based on trial counsel's failure to object when the prosecutor improperly vouched for and bolstered the credibility of four different witnesses by asking them about pre-trial conversations they had with the prosecutor and investigators, indicating to the jury that the witnesses were telling the truth?

Respondent's Counterstatement of Question

Whether the post-conviction relief court properly determined Petitioner failed to prove deficiency and prejudice when 1) trial counsel articulated a valid reason for not objecting; 2) Petitioner failed to set forth a valid, legal objection that would have reasonably excluded this testimony; and 3) there is no reasonable probability an objection would have changed the outcome of trial?

STATEMENT OF THE CASE

Procedural History

In January 2018, the Beaufort County Grand Jury indicted Petitioner for murder and possession of a weapon during a violent crime. (App. 495-498). These charges arose from the fatal shooting of Adrian Lamont Manigo (Victim) on August 22, 2017. On March 11-13, 2019, Petitioner proceeded to a jury trial before the Honorable Perry M. Buckner. Public Defender Trasi Campbell represented Petitioner, and Assistant Solicitors Mary Jones and Kimberly Smith prosecuted the case. The jury convicted Petitioner as indicted, and Judge Buckner sentenced him concurrently to forty years for murder and five years for the weapon charge. (App. 499-500).

Petitioner filed a direct appeal, which was perfected by Appellate Defender Susan B. Hackett through the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Court of Appeals dismissed pursuant to Anders, and the remittitur was sent August 5, 2021.

On March 9, 2022, Petitioner filed an application for post-conviction relief (PCR). (App. 501-507). On November 29, 2023, an evidentiary hearing convened before the Honorable Roger Young. Michael Lifsey, Esquire, represented Petitioner, and Assistant Attorney General Danielle Dixon represented the State. On March 25, 2024, Judge Young issued an order denying relief and dismissing the application. (App. 575-589). Applicant's petition for a writ of certiorari followed.

Summary of Trial Testimony

Victim was fatally shot in his back. (Tr. 181). At trial, eyewitnesses Frank Young, Jr. and Michael Grant identified Petitioner—whom they knew—as the shooter. (Tr. 194, 199-200). Young testified Petitioner and Grant were hanging out in Young's yard when Victim arrived. He stated Petitioner shot Victim three times. (Tr. 199-200). Grant similarly testified he was at Young's house with Petitioner when Victim arrived, and Petitioner shot three times. (Tr. 218). Erik Black, Petitioner's roommate, testified he saw Petitioner running from Young's house. He further testified

Petitioner had previously said he was going to shoot Victim. (Tr. 226-28, 231-32). Reeshemah Bryson and Frederika Gray also testified they saw Petitioner running that day. (Tr. 242-43, 250-51). Law enforcement found Petitioner later that day hiding in a shed and recovered multiple particles of gunshot residue from his hand. (Tr. 261-66, 335-36). Petitioner ultimately confessed in a recorded statement but claimed he was acting in self-defense. Petitioner moved pretrial for immunity, which was denied. At trial, he proceeded on a theory of self-defense.

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the PCR court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. Further, appellate courts "defer to the PCR court's credibility findings as to witnesses who testified before the PCR court." Thompson v. State, 423 S.C. 235, 247, 814 S.E.2d 487, 493 (2018). "Where matters of credibility are involved, this Court gives great deference to a judge's findings, because this Court lacks the opportunity to directly observe the witnesses." Foye v. State, 335 S.C. 586, 589, 518 S.E.2d 265, 267 (1999). However, pure questions of law are reviewed *de novo* without deference to the PCR court. Id. Appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The PCR court properly found Petitioner failed to prove deficiency and prejudice when (1) trial counsel articulated a valid reason for not objecting, (2) Petitioner failed to set forth a valid, legal objection that would have reasonably excluded this testimony, and (3) there is no reasonable probability an objection would have excluded this testimony or changed the outcome of trial

Petitioner argues the PCR court erred in not finding counsel was deficient for failing to object when the prosecutor allegedly improperly vouched for and bolstered the credibility of four witnesses. Specifically, he contends the solicitor improperly asked the witnesses about pre-trial conversations they had with the prosecutor and investigators, which indicated to the jury that the witnesses were telling the truth. (Pet. 7). However, the PCR court properly found Petitioner did not show deficiency because the solicitor's questioning did not constitute improper vouching and Petitioner failed to set forth a valid, legal objection that would have excluded the testimony. The PCR court further properly found it is not reasonably likely an objection would have changed the outcome of trial and thus Petitioner did not prove prejudice.

In a PCR action, Petitioner bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Petitioner must prove that counsel's performances was deficient. Id.; Cherry v. State, 300 S.C. .115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C at 117, 386 S.E. 2d at 635 (quoting Strickland, 366 U.S. at 690). The proper measure of performances is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. At 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the

exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Petitioner must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner such that "there is reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C at 117-18, 386 S.E.2d at 625.

1. Trial counsel articulated a valid reason for not objecting and thus was not deficient.

The PCR court properly found trial counsel articulated a valid reason for not objecting to the solicitor's questioning. When counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Underwood v. State, 309 S.C. 560,425 S.E.2d 20 (1992).

During witness Michael Grant's testimony, the solicitor asked:

> Q. Okay. Do you remember talking to Investigator Duncan?
> A. Yes, ma'am.
> Q. A couple days after the shooting?
> A. Yes, ma'am.
> Q. And you—he asked you about what happened that afternoon?
> A. Yes, ma'am.
> Q. And you remember talking with me as well?
> A. Yes, ma'am.
> Q. We were actually in the parking lot of the Sheriff's office?
> A. Yes, ma'am.
> Q. And I asked you what happened that afternoon?
> A. Yes, ma'am.
> Q. Okay. And do you remember telling both myself and Investigator Duncan that the—that Derio was talking to Dontarious Wright?
> A. Yeah.
> Q. Did you tell us that?
> A. That he was talking to him? Not at the time, he was just standing there.

(Tr. 214-15).

During witness Erick Black's testimony, the following exchange occurred:

Q. Okay. Do you remember speaking with me about two weeks ago outside of [redacted].
A. Yes.
Q. And it was myself and Investigator Hightower?
A. Yes.
Q. And do you remember telling us that you saw the Defendant running away from Mikey's house?
A. Yes.
. . . .
Q. In fact, you told Mr. Hightower and myself that you thought it was odd he was running because he had been shot in the leg in the past?
A. Yeah. Because he—he was shot in the past, but he was normal at that point in time.

(Tr. 227-29).

Q. Okay. And you remember talking to myself and watching a video of yourself when you are speaking with the police about this, correct?
A. Yes.
Q. And amounting to that video, you remember telling the police, who just got there, 'He said, if he keeps running his mouth, then next time I see him, I'm going to shoot him'?
A. Yeah. That was when we were in the car.

(Tr. 233).

During witness Andrew White's testimony, the following exchange occurred:

Q. Okay. Do you remember speaking with myself and Investigator Hightower a few weeks back at your home? This man right here?
A. Uh-huh. (Indicating affirmatively.)
Q. And also Ms. Smith.
A. Uh-huh. (Indicating affirmatively).
Q. We came to your home and spoke with you?
A. Uh-huh. (Indicating affirmatively).
Q. And we asked you about what happened that afternoon?
A. Uh-huh. (Indicating affirmatively).
Q. And you told us that while you were cutting the grass, two kids came running through your yard?
A. Well, I don't know if I said "running," but I know they were coming through my yard.

(Tr. 240).

During witness Fredericka Gray's testimony, the following occurred:

> Q. Do you remember meeting with myself and Investigator Hightower downstairs a week or so ago?
> A. Yeah.
> Q. And you told us [Petitioner] appeared 'panicked.'
> A. Yeah.

(Tr. 251-52).

At the PCR hearing, trial counsel testified that if the solicitor "had just said herself alone, perhaps [she would have objected], but the investigator, who was the lead investigator on the case, had testified – was also included in the statement, so I did not object to it." (App. p. 545). When asked about specifically not objecting to Erick Black's testimony, trial counsel testified that "part of his being shot in the past, it factored into his mental state as well as in terms of perceiving threats in a self-defense argument." (App. p. 546). Trial counsel testified she did not view the questioning as vouching for the witness. (App. pp. 547-548). Based on the foregoing, the PCR court properly found trial counsel articulated valid reasons for not objecting. See Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel."). Specifically, although the solicitor here referenced herself, she also referenced the lead investigator. Thus, had counsel objected, the reasonable outcome would have been the solicitor rephrasing the question to reference only the investigator. Because it is not likely an objection would have excluded the testimony, counsel's decision to not object was reasonable under prevailing professional norms and not deficient. Petitioner thus did not prove deficiency.

2. Petitioner failed to set forth a valid, legal objection that would have reasonably excluded this testimony.

The PCR court properly found that Petitioner failed to set forth a valid, legal objection that

would have reasonably excluded this testimony. At the hearing, Petitioner argued the examination by the solicitor constituted improper vouching. However, the PCR court properly found this was not improper vouching.

"Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity, or where a prosecutor implicitly vouches for a witness' veracity by indicating information not presented to the jury supports the testimony" State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001).

In State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001), *rev'd on other grounds*, 534 U.S. 246, the South Carolina Supreme Court determined the following questions of a jailhouse informant improperly bolstered his testimony: "What did I tell you that I absolutely required regarding your testimony to this jury today?"; "Did I tell you to tell the truth to this jury?"; and "What did I tell you regarding your testimony to this jury today? The only thing the State wanted from your testimony was what?" Critically, the Court reasoned:

> [T]he jury could have perceived that the assistant solicitor held the opinion that McCormack was, in fact, telling the truth. Thus, McCormack's testimony carried with it the imprimatur of the government, and this bolstering may have induced the jury to trust the State's judgment about McCormack. Because a jury must make its own assessment on the credibility of witnesses, it is inappropriate for the State to assure the jury of a government witness's credibility.

Id. at 369, 540 S.E.2d at 860–61 (2001), 122 S. Ct. 726, 151 L. Ed. 2d 670 (2002)

Likewise, in State v. Reyes, 343 S.C. 350, 368, 540 S.E.2d 851, 860 (2001), the South Carolina Supreme Court determined the following questions of a child-victim improperly bolstered the child's testimony: "Do you know that while you're here, we only talk about things that are the truth?"; "So you understand that when we're in here, we're going to talk about the truth. Do you understand that?" In finding the foregoing improper, the Court reasoned that although the general

line of questioning about whether the child knew the difference between the truth and a lie did not impermissibly bolster her testimony, the solicitor's interjection of the first-person pronoun "we" when questioning the child about telling the truth constituted improper bolstering. However, the Court determined the jury charge on child-witness credibility cured any bolstering, making the improper bolstering harmless beyond a reasonable doubt.

Here, unlike Reyes and Kelly, the solicitor's line of questioning did not relate to whether the witness was telling the truth or reference the importance of telling the truth. Rather, the solicitor merely questioned the witnesses about whether they made prior statements, which was permissible and necessary to lay the groundwork for impeachment under Rule 613(b), SCRE. Although the use of the first-person pronoun may not have been ideal, that in itself is not dispositive. See State v. Busse, 439 S.C. 104, 112, 886 S.E.2d 208, 212 (2023) (setting forth situations when a solicitor could properly use a first-person pronoun). Rather, the questions must be viewed in context. In context, the solicitor neither indicated a personal belief in the credibility or honesty of a witness nor implicated the testimony was corroborated by evidence not known to the jury. Based on the foregoing, the questioning did not constitute improper bolstering or vouching, and the PCR court properly found Petitioner did not set forth a valid, legal objection that would have excluded this testimony. Thus, Petitioner did not prove deficiency.

3. There is no reasonable probability an objection would have changed the outcome of trial.

As set forth above, Petitioner failed to set forth a valid legal objection that would have reasonably excluded this testimony and thus did not prove prejudice. Further, even had the foregoing testimony been excluded, there is no reasonable probability the outcome would be different. At the PCR hearing, Petitioner pointed to the following testimony he believed counsel should have objected to: (1) Grant's testimony that Petitioner was talking to Derio Young prior to

the shooting, (2) Black's testimony that he saw Petitioner running around the time of the shooting, (3) White's testimony that he saw two kids go through his yard, (4) Gray's testimony that Petitioner appeared panicked, and (5) Black's testimony that Petitioner said he would shoot the victim if the victim kept running his mouth. However, the foregoing testimony is either cumulative to other testimony or not material to whether Petitioner was acting in self-defense.

Specifically, Grant's testimony that Petitioner was talking to Derio was cumulative to Frank Young's testimony (Tr. 195-97) and not material to whether Petitioner was acting in self-defense. Black's testimony that he saw Petitioner running and White's testimony that he saw two kids go through his yard was cumulative to Bryson and Gray's testimony that they saw Petitioner running. (Tr. 242-43, 250-51). Gray's testimony that Petitioner appeared panicked is not material in light of other testimony that Petitioner was seen running from the scene and found by law enforcement hiding in a shed. Finally, Black's testimony that Petitioner said he would shoot the victim if the victim kept running his mouth was cumulative to testimony Black gave immediately prior to the portion Petitioner cites—where Black testified Petitioner had previously told him he would shoot the victim because the victim "told him to keep his hand out of the cookie jar." (Tr. 232).

Here, Petitioner admitted to shooting the victim. (Tr. 357, 361). Although he proceeded on self-defense, numerous eye-witnesses testified the victim was walking away when he was shot, and the pathologist testified the two bullets entered the back of the victim. (Tr. 200-03, 218, 394). Finally, law enforcement found Petitioner hiding in a shed shortly after the shooting. Based on this evidence and the fact that the testimony Petitioner believes should have been objected to is either cumulative or not material to whether Petitioner was acting in self-defense, it is not reasonably probable the outcome would be different had the foregoing testimony been excluded.

CONCLUSION

Based on the foregoing, the PCR court correctly determined that Petitioner failed to show that trial counsel provided constitutionally ineffective assistance. Therefore, this Court should deny Petitioner's Petition for Writ of Certiorari.

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